

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VIRGIL GREEN,

Petitioner,

Case Number 2:06-cv-15377
Honorable Denise Page Hood

v.

DUNCAN MACLAREN,

Respondent.

**OPINION AND ORDER GRANTING IN PART AND DENYING IN PART
CERTIFICATE OF APPEALABILITY AND GRANTING PETITIONER
PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS**

This Court has issued an opinion and order denying the petitioner's application for a writ of habeas corpus.

Pursuant to Rule 11 of the Rules Governing Section 2254 Proceedings, which was amended as of December 1, 2009:

The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

Rule 11, Rules Governing Section 2254 Proceedings.

28 U.S.C. § 2253(c)(1)(A) and F.R.A.P. 22(b) state that an appeal from the district court's denial of a writ of habeas corpus may not be taken unless a certificate

of appealability (COA) is issued either by a circuit court or district court judge. If an appeal is taken by an applicant for a writ of habeas corpus, the district court judge shall either issue a certificate of appealability or state the reasons why a certificate of appealability shall not issue. F.R.A.P. 22(b). To obtain a certificate of appealability, a prisoner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

When a district court denies a habeas petition a certificate of appealability should issue, and an appeal of the district court's order may be taken, if the petitioner shows that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In the present case, the Court concludes that a certificate of appealability is warranted with respect to Petitioner's second claim. Jurists of reason could differ on whether the trial court's instruction to the jury to disregard Petitioner's statement of surprise was harmless. Petitioner's other claims do meet the standard for granting a certificate because reasonable jurists could not debate the Court's assessment of those claims. The Court will also grant Petitioner leave to appeal in forma paupers.

Accordingly, it is **ORDERED** that a certificate of appealability is **GRANTED** with respect to Petitioner's second claim and **DENIED** with respect to his other claims.

It is further **ORDERED** that permission to proceed on appeal in forma pauperis is **GRANTED**.

S/Denise Page Hood

Denise Page Hood

United States District Judge

Dated: April 14, 2015

I hereby certify that a copy of the foregoing document was served upon counsel of record on April 14, 2015, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager